

94 264080

RECORDING REQUESTED BY:

STEPHEN A. CIMPERMAN

WHEN RECORDED, MAIL TO:

Stephen A. Cimperman, Site Mitigation Branch Chief
Department of Toxic Substances Control
Region 2
700 Heinz Street, 2nd Floor
Berkeley, CA 94710

AT O'CLOCK M.
CONTRA COSTA COUNTY RECORDS
STEPHEN L. WEIR
COUNTY RECORDER

40 -

Attention: 2801 Giant Rd., Richmond
"Cooper Chemical" Project Officer

COVENANT AND AGREEMENT

TO RESTRICT USE OF PROPERTY

("Site R", 2801 Giant Rd., Richmond, CA)

This Covenant and Agreement ("Covenant") is made as of the 17th day of February, 1994, by and between Triple A Machine Shop, Inc. ("Covenantor"), located in Richmond, County of Contra Costa, State of California, and the California Department of Toxic Substances Control ("Department"), with reference to the following facts:

- A. The property described in Exhibit "A", which is attached hereto and incorporated by this reference, has been used as a hazardous waste disposal site ("the Property").
- B. Drums containing adhesive materials and solvents, including benzene, toluene, xylene and ethylbenzene, were removed from the Property. Although the drums and a substantial amount of the contaminated soil have been removed, traces of the above hazardous substances remain. Additionally, heavy metals including lead, zinc, copper, nickel and arsenic are in the soils on the Property. Lead concentrations exceeding

the Total Threshold Limit Concentration make this soil hazardous waste pursuant to Division 4.5, Title 22, Section 66261.24 of the California Code of Regulations. The contaminated soil on the Property has been covered with a cap ("the cap") consisting of soil layer one foot in depth.

- C. If the contaminated soil were uncovered, exposure to the contaminated soils could occur via direct contact, surface water run-off or wind dispersal. The potential human health effects resulting from exposure to the lead-containing soil include kidney damage, and at high levels, neurotoxic effects. However, the areas of high contamination are dispersed. The risk of public exposure to the contaminants has been minimized by placing the Cap over the buried soils to eliminate any significant risks to human health or the environment.
- D. Land in the vicinity of the Property is a mixture of vacant land and industrial buildings. Although much of the area in the immediate vicinity of the Property is zoned industrial, areas 1/3 mile to the east are residential.
- E. Covenantor desires and intends that in order to protect the present and future public health and safety, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from hazardous wastes which have been deposited on the Property. The Property

shall be used only for heavy industrial purposes.

- F. The Covenantor further desires and intends that if the Property is to be used for purposes other than heavy industrial the proposed use shall be submitted in writing to the Department for approval in advance. Additionally, Covenantor, or its successors in interest, shall obtain all other necessary approvals from any other agency with jurisdiction over land use. Any proposed change in the use of the Property from heavy industrial use shall also comply with this Covenant. The Department shall not unreasonably withhold its consent to any such change, provided all of its criteria have been met.

ARTICLE I

GENERAL PROVISIONS

1.01 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions, and restrictions, (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof. Each and all of the Restrictions are for the benefit of and enforceable by the

Department against the Property and then current owner.

1.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of the Property to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agency, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

1.03 Incorporation into Deeds and Leases, Notice. Covenantor desires and covenants that all of the Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

ARTICLE II

DEFINITIONS

2.01 Department. "Department" shall mean the California State Department of Toxic Substances Control and shall include its successor agencies, if any.

2.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.

2.03 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.04 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs, and assigns, who hold title to all or any portion of the Property.

ARTICLE III

DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use. Covenantor shall restrict the use of the Property to heavy industrial use as follows:

- a. No residence for permanent human habitation shall be permitted;
- b. No hospitals or health care clinics shall be permitted;
- c. No schools of any kind for persons under 21 years of age shall be permitted;
- d. No day care centers for children, the elderly or disabled shall be permitted;
- e. No raising of food of any kind shall be permitted;
- f. All owners, lessors, tenants and lessees shall maintain the integrity of the Cap to prevent access to and exposure of hazardous substances in the soil beneath the Cap. The owners or occupants shall notify the Department in writing of the nature, cause, location,

and date of any disturbance of the Cap, within five working days. The owners or occupants shall notify the Department in writing of the nature and date of the repairs of any disturbance of the Cap within five working days; and

- g. The Covenantor agrees that the Department shall have access to the Property during business hours for the purposes of assuring compliance with the Covenant, as provided for in Chapters 6.5 and 6.8 of Division 20 of the Health and Safety Code; however, the Department shall not interfere with the owner's or tenant's right of quiet enjoyment.

3.02 Conveyance of Property. The Owner or Owners shall provide a fifteen (15) days advance notice to the Department of any sale, lease, or other conveyance of the Property. The Department shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, by administrative order, or by reason of this Covenant.

3.03 Enforcement. Failure of the Owner to comply with any of the restrictions, as set forth in paragraph 3.01, shall be grounds for the Department, by reason of the Covenant, to require that the Owner modify or remove any improvements constructed in violation of that paragraph. Violation of the Covenant shall be

grounds for the Department to file a civil action against the Owner as provided by law.

3.04 Notice in Agreements. All Owners, lessors, tenants, lessees and licensees shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the Property. The instrument shall contain the following statement:

"The land described herein contains hazardous waste. This condition renders the land and the owner, lessee, or other possessor of the land subject to the requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists."

ARTICLE IV

VARIANCE AND TERMINATION

4.01 Variance, Modification, or Agreement. Any Owner or, with the Owner's consent any Occupant of the Property, or any portion thereof, may apply to the Department for a written modification of the provisions of this Covenant. Such an application shall be made in accordance with Health and Safety Code Section 25233.

4.02 Termination. Any Owner or, with the Owner's consent, an Occupant of the Property or a portion thereof, may apply to the Department for a termination of the restrictions as they apply to all or any portion of the Property. Such an application shall be made in accordance with Health and Safety Code Section 25234.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in relation to the Property in perpetuity.

ARTICLE V

MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective: 1) When delivered, if personally delivered to the person being served or to an officer of a corporate party being served or to an official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid, certified, return receipt requested, as follows:

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To: "Covenantor"
Albert Engel, President
Triple A Machine Shop, Inc.
2801 Giant Road
Richmond, CA 94806-2246

Copy to: Department of Toxic Substances Control
Attn: 2801 Giant Road, Richmond
"Cooper Chemical" Project Officer
700 Heinz Avenue, 2nd Floor
Berkeley, CA 94710

5.03 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

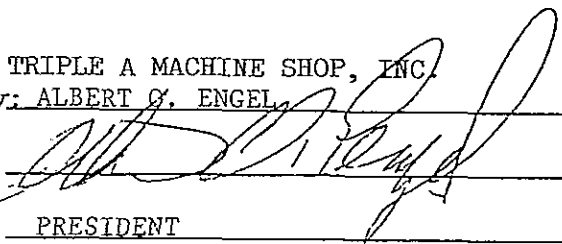
5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.05 Recordation. This instrument shall be executed by the Covenantor and by the Site Mitigation Branch Chief, Region 2, Department of Toxic Substances Control. This instrument shall be recorded by the Covenantor in the County of Contra Costa within ten (10) days of the date of execution.

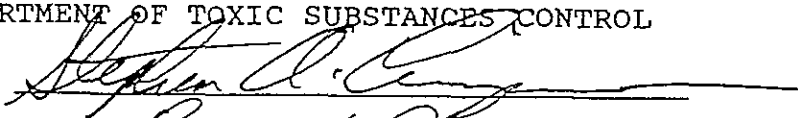
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5.06 References. All references to Code sections include successor provisions.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

OWNER: TRIPLE A MACHINE SHOP, INC.
By: ALBERT G. ENGEL
By: 
Title: PRESIDENT
Date: February 17, 1994

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: 
Title: Branch Chief
Date: 8/10/94

STATE OF CALIFORNIA)

COUNTY OF Contra Costa)

On February 17, 1994, before me, a
(Date)

Notary Public in and for the State of California, personally

appeared ALBERT O. ENGEL
(Name)

personally known to me, or proved to me on the basis of

satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that

He executed the same in his/her/their
(he, she, they)

executed the same in his/her/their authorized capacity(ies) and

that by his/her/their signature(s) on the instrument the

person(s), or the entity upon behalf of which the person(s)

acted, executed the instrument.

WITNESS my hand and official seal.



Betty
Notary's Signature

All that real property located in the City of Richmond, County of Contra Costa, State of California described as follows:

Parcel C of Parcel Map MS 756-91 recorded July 27, 1992 in Book 159 of Maps at Pages 3 and 4 as series number 92-187580.

EXHIBIT "A"